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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,265	06/30/2005	Hans Rudolf Czerny	CZERNY ET AL.-2 (PCT)	7688
25889	7590	01/25/2008		
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			EXAMINER LUKS, JEREMY AUSTIN	
			ART UNIT 2837	PAPER NUMBER
			MAIL DATE 01/25/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

*AL*

<b>Office Action Summary</b>	<b>Application No.</b> 10/519,265	<b>Applicant(s)</b> CZERNY ET AL.	
	<b>Examiner</b> Jeremy Luks	<b>Art Unit</b> 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 3-7, 9, 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roller (6,186,270) in view of Wang (6,125,965). Roller teaches a sound absorber (Figure 11) comprising a molded part (7) made of thermoplastic material (Col. 3, Lines 25-31 and 41-44) and at least one second part (1) which with the molded part (7) delimits a hollow space (4), wherein a plurality of spacers (3b), which project into the hollow space (4) and are directed towards the second part (1) are formed on the molded part (7), wherein the molded part (7) has a plurality of recesses (4a) on the outside which each extend into a spacer (4); wherein the recesses (4a) are closed towards the hollow space (4); wherein the molded part (3b, 7) is produced by deep drawing of a thermoplastic plastic PET film (Col. 3, Lines 25-31 and 41-44); wherein the second part (1) is formed of a heavy layer (Col. 4, Lines 32-34); wherein the average outside diameter of the respective spacer (3b) is smaller than its average length; wherein the depth of the molded part (7) is greater than the respective length of the spacers (3b); wherein the spacers (3b) and the recesses (4a) are formed as non-uniformly distributed over the surface of the molded part (7); wherein the recesses (4a) have different inside diameters; wherein the recesses (4a) have different depths and the

spacers (3b) have different lengths; and wherein the spacers have different lengths in areas (In Figure 11, left side comprising first two spacers could be one area, and the right side comprising next two spacers could be another area), said spacers (3b) of different length being formed on the molded part (7); and wherein the spacers (3b) have the same length within each area (can clearly be seen in Figure 11). Roller fails to teach wherein the spacers are pin-shaped or spike-shaped; and wherein the hollow space in the area between the spacers is partially provided with acoustically effective material. However, Roller teaches that it is well known frequently used in sound absorbers to fill spaces with insulating material (Col. 2, Lines 24-26), and therefor inherently teaches wherein the hollow space (4) in the area between the spacers (3b) could be partially provided with acoustically effective material as an obvious matter of design choice. Wang teaches pin-shaped spacers (Figures 2 and 3, #12). The Examiner considers the tapered, conical shape of cup #12 to satisfy the limitation of being pin-shaped. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Roller, with the apparatus of Wang to provide a spacer or cup having a configuration for guiding and dampening noise therein. Further, it has been held by the courts that a change in shape or configuration, without any criticality, is nothing more than one of numerous shapes that one of ordinary skill in the art will find obvious to provide based on the suitability for the intended final application. See *In re Dailey*, 149 USPQ 47 (CCPA 1976).

2. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roller (6,186,270) in view of Wang (6,125,965), as applied to claim 1 and further in view of Woodward (4,821,841). Roller and Wang are relied upon for the reasons and disclosures set forth above. Roller and Wang fail to teach wherein the outside of the molded part having the recesses lies exposed. Woodward teaches wherein the outside of the molded part (Figure 11, #2) having recesses (3) lies exposed when used in combination. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the apparatus of Roller as modified, with the apparatus of Woodward to provide an exit and entry through the recess to create a Helmholtz resonator, better attenuating sound. Further, it has been held that omission of an element and its function (i.e. Roller Figure 11, #2) in a combination where the remaining elements perform the same function as before involves only routine skill in the art. In re Karlson, 136 USPQ 184.

3. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roller (6,186,270) in view of Wang (6,125,965), as applied to claim 1 and further in view of Maeda (4,957,797). Roller and Wang are relied upon for the reasons and disclosures set forth above. Roller and Wang fail to teach wherein the molded part is formed as cassette-shaped or dish-shaped, and wherein the molded part has a circumferential fixing flange. Maeda teaches wherein a molded part (Figures 3 and 4, #6, 7) is formed as dish-shaped, and wherein the molded part (6) has a circumferential fixing flange (7). It would have been obvious to one of ordinary skill in the art at the time of

the invention to combine the apparatus of Roller as modified, with the apparatus of Maeda to allow attachment to a vehicle, such as the roof section.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection. The Examiner considers the obvious combination of Roller, Wang, Woodward and Maeda to teach all of the limitations as claimed by Applicant

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pertinent arts of record relating to sound absorbers are disclosed in the PTO-892.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy Luks whose telephone number is (571) 272-2707. The examiner can normally be reached on Monday-Thursday 8:30-6:00, and alternating Fridays.

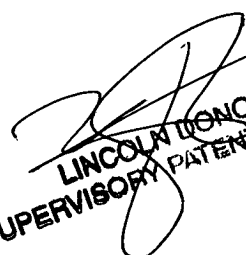
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeremy Luks   
Patent Examiner  
Art Unit 2837  
Class 181

  
LINCOLN DONOVAN  
SUPERVISORY PATENT EXAMINER